

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 31 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOHANNES ANTHONY JEREMIAS
SAHERTIAN,

Petitioner,

v.

ERIC H. HOLDER Jr., Attorney General,

Respondent.

No. 06-73214

Agency No. A095-630-221

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 29, 2009^{**}

Before: WALLACE, LEAVY, and HAWKINS, Circuit Judges.

Johannes Anthony Jeremias Sahertian, a native and citizen of Indonesia, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying his application for

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

withholding of removal and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009), and we grant in part and deny in part the petition for review and remand.

The agency erred by refusing to consider the evidence regarding whether Sahertian belonged to a disfavored group in assessing his withholding of removal claim. *See id.* at 1067. Therefore, we remand to the BIA for reconsideration of this claim. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam). In addition, the agency should reconsider whether the harm to Sahertian’s father, brother, and family business occurred at least in part on account of the family’s Christian religion in light of our recent decision in *Sinha v. Holder*, 564 F.3d 1015, 1020-23 (9th Cir. 2009).

The record does not compel the conclusion that there is a pattern or practice of persecution of Christians in Indonesia. *See Wakkary*, 558 F.3d at 1062.

Finally, substantial evidence supports the agency’s denial of CAT relief because Sahertian failed to show that it is more likely than not that he will be tortured if he returns to Indonesia. *See id.* at 1067-68.

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW GRANTED in part; DENIED in part;
REMANDED.**